

‘hoof; in that case, the creditor having used the first lawful diligence shall be preferred.’

The defender *alleged*; That he was a fair purchaser for an adequate price, which he had truly paid, and applied for purging of real diligences, or to true onerous creditors without fraud; and was not bound to notice the pursuer’s diligence of horning and denunciation, because the said denunciation was only used at the market-cross of Edinburgh, where the party did not reside, and so could have no effect as to escheat, single or liferent; and consequently the same was not a lawful diligence duly to affect his debtor’s lands purchased by the defenders; neither had the pursuer prosecuted his diligence by adjudging, or otherwise affecting the debtor’s estate; and, though the Lords do often favour the diligence of creditors, so as to annul all voluntary deeds to their prejudice after the first step of diligence by horning, yet that is when they are careful to proceed to consummate their diligence without delay; but inchoate diligence not prosecuted, is not comprehended in the words, nor meaning, nor design of the act.

“THE LORDS found the pursuer’s horning not being executed at the head-burgh of the shire where the party dwelt, nor any other diligence done for affecting his debtor’s lands disposed, that he had not the benefit of the act of Parl. 1621.”

*Dalrymple, No 75. p. 95.*

1708. November 27.

JOHN FORBES in Tombeg *against* GEORGE FORBES of Shiels.

JOHN FORBES in Tombeg, having charged George of Shiels with horning, for payment of the sums in a bond, principal, penalty, and annualrents resting unpaid due by George to him, the LORDS assoilzied the debtor from the penalty, in respect, some annualrents had been paid, and the charge should have been restricted to so much annualrent as was truly resting; albeit the debtor could not say, that when charged he offered to pay the annualrents truly resting, and that the charger refused to accept thereof.

*Forbes, p. 284.*

1742. December 9.

MURDOCH KING *against* JOHN HUNTER.

MURDOCH KING having obtained a decret of adjudication upon a decret *cog. causa*, before the Sheriff of Stirling, containing a precept against the superior for infesting him, he applied, in common form, to the Ordinary on the bills, to direct letters of horning against the superior.

No 20.

lands, found not to give the creditor the benefit of act of Parl. 1621, cap. 18.

No 21.

A charge of horning was given on a bond for payment of principal, penalty, and annualrents resting unpaid in general, without restricting to so much annualrent as was truly resting. This sustained as a sufficient ground to assoilzie the debtor from the penalty.

No 22.

Horning against a superior cannot pass on a decree of adjudication ob-